

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	CC Docket No. 95-116
Telephone Number Portability)	
)	

**COMMENTS OF AT&T WIRELESS SERVICES, INC. ON CTIA PETITION FOR
DECLARATORY RULING**

Pursuant to Public Notice DA 03-20211,¹ AT&T Wireless Services, Inc. (“AWS”) respectfully submits these comments on the petition by the Cellular Telecommunications & Internet Association (“CTIA”) for declaratory ruling. AWS supports CTIA’s request that the Commission rule that wireline carriers are obligated to port their customers’ numbers to commercial mobile radio service (“CMRS”) providers in those rate centers which are within the wireless carriers’ service area. If the Commission fails to grant the petition, it must defer or further extend the wireless local number portability (“LNP”) deadline.

I. INTRODUCTION AND BACKGROUND

As the CTIA petition notes, CTIA and other parties (including AWS) are challenging the Commission’s decision not to forbear from imposing the LNP obligation on wireless carriers.² Among other things, the appellants and intervenors in support of the appellant have asserted on appeal that the Commission has overstepped its jurisdictional authority under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), by imposing the LNP requirement on wireless carriers, even though they are not local exchange

¹ Public Notice, *Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas*, DA 03-20211 (Jan. 2003) (comments due Feb. 26, 2003).

² *Cellular Telecommunications & Internet Association and Cellco Partnership, d/b/a Verizon Wireless v. FCC*, No.

carriers (“LECs”).³ The appellants and intervenors have also asserted that there is no need for LNP to be implemented by wireless carriers, given that the level of competition within the wireless industry is considerable; that wireless rates are low and continue to fall; that wireless LNP is not necessary to protect consumers; and wireless customers already change wireless providers easily.⁴ However, to the extent that the Commission’s decision is not overturned and/or the Commission continues to require LNP of wireless carriers, there are a number of outstanding and difficult issues that have been raised that the Commission must resolve before LNP can go forward.⁵ The CTIA petition raises yet another critical issue – the “rate center disparity” issue – which if unresolved, could fundamentally affect the ability of customers to port numbers from wireline to wireless carriers.

The “rate center disparity” issue was outlined and identified in 1998 by the wireline and wireless working industry groups in position papers, and referred by the North American Numbering Council (“NANC”) to the Commission for its resolution in 1998, and on two subsequent occasions.⁶ However, the Commission has yet to address or resolve this issue. Wireline carriers argue that there is “rate center disparity” or a competitive issue in porting

02-1264 (D.C. Cir.). AWS along with various other parties intervened in support of the petition.

³ Under Section 251, the LNP obligation was only imposed on LECs, and the Commission has consistently found that wireless carriers are not LECs. *See, e.g., Brief of Intervenors in Support of Petitioners*, Case No. 02-1264 (filed Feb. 24, 2003) (“Intervenors’ Brief” at 6, n. 19).

⁴ *See Intervenors’ Brief* at 11-24.

⁵ *See e.g.,* Petitions for Temporary Waiver and Extension of Time by Cellular Phone of Kentucky, Inc., and Litchfield County Cellular, Inc. (filed Nov. 22, 2002); ⁵ Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petitions for Extension of the Deadline for Support of Roaming by Wireless End-Users with Ported or Pooled Numbers*, DA 03-148 (Jan. 16, 2003).

⁶ *See* Letter from Alan C. Hasselwander, NANC, to Richard Metzger, Jr., FCC, Common Carrier Bureau (May 18, 1998) (submitting NANC Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998) (*First NANC Report on Wireless Wireline Integration*); Letter from John R. Hoffman, NANC, to Lawrence C. Strickling, FCC, Common Carrier Bureau (Nov. 4, 1999) (submitting *Second NANC Report on Wireless-Wireline Integration*); Letter from John R. Hoffman, NANC, to Dorothy Attwood, FCC Common Carrier Bureau (Nov. 29, 2000) (submitting *Third NANC Report on Wireless Wireline Integration*).

numbers from a wireline carrier to a wireless carrier, because numbers ported from *wireless* to *wireline* carriers require as a technical matter that the customer be physically located within the same rate center as the number, but numbers ported from a *wireline* carrier to a *wireless* carrier is “virtually unlimited” and the “end user can be physically located anywhere.”⁷ The wireline industry has argued that this disparity “would create a distinct competitive disadvantage to wireline service providers.”⁸

Although AWS continues to assert that the LNP requirement was improperly imposed on wireless carriers and does not serve the public interest, to the extent that the Commission’s decision regarding wireless LNP is not overturned, AWS joins CTIA in urging the Commission to grant the requested ruling. If wireless carriers are required to implement LNP, wireline carriers must be required to port numbers to wireless carriers anywhere within the wireless carriers’ service area. Other potential “solutions” to the purported disparity would impose significant costs, burdens, or inefficiencies. If the Commission is unable to grant the requested declaratory ruling prior to the wireless LNP implementation date, it should not continue to mandate wireless LNP by November 24, 2003.

II. IF THE FCC IS TO MANDATE LNP, THE RATE CENTER ISSUE MUST BE CLARIFIED BEFORE WIRELESS LNP IS TO PROCEED

It is critical that the Commission act now on the requested declaratory ruling before the wireless LNP implementation date. The industry groups have tried diligently to resolve this issue on their own, and have been unable to do so. For this reason, as discussed in the CTIA petition, the industry working groups have already referred this issue to the Commission three times: (1) on May 18, 1998, the NANC submitted the issue in its *First LNPA Working Group*

⁷ See *First NANC Report on Wireless Wireline Integration*, Appendix D, at Section 1.3 (“Wireline Position Paper”).

⁸ *Id.*

Report on Wireless Wireline Integration report to the Commission's Common Carrier Bureau for its resolution; (2) on November 4, 1999, NANC once again formally requested Commission resolution of the issue in its *Second Report on Wireless Wireline Integration*; and (3) on November 29, 2000, NANC again raised the issue with the Commission in its submission of the *Third Report on Wireless Wireline Integration*.⁹ Despite these formal referrals, and a more recent request by CTIA in November 2001 for the Commission to resolve this issue,¹⁰ the Commission has not yet done so.

Without the Commission's efficient resolution of this issue, it is likely that wireline carriers will simply refuse to port to wireless carriers in certain situations. The wireline industry has asserted that porting between service providers must meet "the minimum criteria of parity and rate center integrity" and that no viable solution exists other than "location portability," which would meet both of these criteria. Because of, in part, the complexity associated with location portability, the wireline carriers have further asserted that wireline-wireless porting should be deferred.¹¹ Given the wireline industry's stated position on this issue,¹² the Commission's failure to rule on the CTIA petition will likely result in wireline carriers' refusal to port numbers to wireless carriers. Such a result would neither benefit customers nor advance the Commission's stated policies behind LNP. In particular, CTIA notes that the Commission's "objectives with respect to promoting intermodal competition will fail to materialize without

⁹ See, *supra*, n. 6.

¹⁰ See CTIA Petition at 10, *citing* Ex Parte Letter from Michael Altschul, CTIA General Counsel, to Dorothy Attwood, FCC, Common Carrier Bureau, in Numbering Resource Optimization, CC Docket No. 99-200 (filed Nov. 21, 2001).

¹¹ Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3.III.

¹² Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3.II.J..

prompt action.”¹³ To the extent that the Commission relies on intermodal competition as the basis for implementing wireless LNP, the Commission must act now and rule on this petition in a manner consistent with its objectives.

III. THE COMMISSION SHOULD GRANT THE REQUESTED RULING

To the extent that wireless LNP implementation is required, the Commission should rule that wireline carriers are required to port numbers to wireless carriers wherever the wireless carrier’s serving area overlaps the rate center associated with the ported number. This ruling is consistent with the Act; the Commission’s orders regarding LNP; and the network architectures of wireless and wireline carriers. Any suggestions that wireline-wireless porting results in an unfair disparity to wireline carriers are simply groundless.

A. The Requested Ruling is Consistent with the 1996 Act and FCC Orders

Section 251(b)(2) of the Act imposes on *LECs* the duty to provide, “to the extent technically feasible,” number portability in accordance with the Commission’s requirements.¹⁴ As defined in the 1996 Act, “number portability” means “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁵ The Commission also noted that the statutory definition of number portability means “service provider portability,” or “the ability to retain one’s number when changing service providers.”¹⁶ As the Commission stated in its *First LNP Order*, “Section 251(b) requires local exchange carriers to provide number portability to all

¹³ CTIA petition at 16.

¹⁴ 47 U.S.C. Section 251(b)(2).

¹⁵ 47 U.S.C. Section 153(30).

¹⁶ *Id.* at para. 27.

telecommunications carriers, and thus to CMRS providers as well as wireline service providers.”¹⁷ Under this order, wireline LECs are required to port numbers to wireless carriers today.

There is no exception in the statute or the Commission’s orders from the LNP requirement based on competitive concerns. The only basis on which a LEC might assert it is not required to port a number is where it is not “technically feasible.” However, there is nothing about wireline-wireless porting that poses a technical issue or difficulty. As CTIA correctly explains, the rate center issue is not one of a “technical” nature, but rather, involves policy concerns. In 1997, in implementing LNP requirements, the Commission adopted the *NANC Architecture and Administrative Plan for Local Number Portability Report*, which established that “portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns.”¹⁸ Porting a number to a wireless carrier does not violate or conflict with this requirement. Specifically, porting a number to a wireless carrier does *not* require a change in the rate center designation. From a technical perspective, the number remains associated with the same rate center, and calls to that number continue to be rated according to the rate center designation.¹⁹ Further, although “number portability” is defined as the ability of a customer to retain its telephone number “at the same location” when switching providers, the wireless customer’s “location” for rating purposes is the rate center.

B. Wireline Assertions About “Competitive Disparity” are Unfounded

The LEC assertion that there is a competitive disparity associated with porting from

¹⁷ *First LNP Order* at para. 152.

¹⁸ *NANC Architecture and Administrative Plan for Local Number Portability Report* (Apr. 23, 1997) at Section 7.3.

¹⁹ The wireline carriers agree that “available wireless-wireline porting methodologies proposed in the WWITF have met the criterion of rate center integrity.” Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at Section 1.3.II.B.

wireline to wireless carriers is completely unfounded. Both wireless and wireline providers are permitted to port in a number within any rate center in which the carrier is doing business and can provide service to the customer. In both cases, the number remains assigned to the original rate center and calls originated by a wireline end-user continue to be rated to that rate center.

Moreover, to the extent that there are differences between what wireless and wireline carriers can offer a customer seeking to port numbers, the distinctions are due to an inherent difference between the mobile nature of wireless service and the fixed nature of wireline service. These differences exist today regardless of inter-modal porting. Perhaps most fundamentally, wireless carriers can offer their customers the ability to receive a call anywhere within the wireless carrier's service area, and, depending on agreements that their carriers have with roaming partners, to an even greater geographic area. In addition, wireless carriers have flexibility about the rate center from which they can assign numbers to customers.²⁰ Although wireless carriers generally provide numbers to customers in rate centers in which the customer lives or works, wireless carriers are not required to assign numbers in a particular rate center.

C. The Requested Ruling Provides the Best Resolution

The requested ruling by CTIA is the most practical and efficient way to resolve this controversy. Indeed, other potential "solutions" to this issue are costly and create additional difficulties.²¹ For example, another way to address this issue is with "location portability." However, the Commission has thus far refused to mandate location portability, citing the costs and complexity of such a requirement.²² Even the wireline industry acknowledged that location portability would be a complex and costly endeavor, requiring both federal and state

²⁰ See *First NANC Report on Wireless Wireline Integration*, Appendix D, 1.2 (2.3).

²¹ *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3-1.4.

involvement, and significant resources to determine the scope of such portability.²³

Another alternate proposal (which was rejected by the Wireless-Wireline Integration Task Force) would be to have the Commission require wireless customers only to port and/or obtain numbers within the rate centers in which the wireless carrier has previously drawn numbers, and where the wireless customer's residence/business is located.²⁴ Even the *wireline* industry acknowledged that this option would be illogical and inefficient, because it would require reversal of current numbering precedent, place artificial restrictions on wireless carriers, ignore the inherent difference between wireless networks and wireline networks, and require wireless carriers to operate under rules that are inapplicable to their service offerings.²⁵ Further, to the extent that the Commission were to consider such changes, it would need to undertake a much more comprehensive proceeding to revise these rules before mandating wireless LNP.

Finally, the Commission could simply defer or delay the requirement of wireline carriers to port to wireless carriers, but as discussed above, this option flatly violates the law and the Commission's stated objectives behind LNP of promoting inter-modal competition.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant the CTIA petition and find that wireline carriers are required to port numbers to wireless carriers within the rate centers that are in the wireless carriers' service area. If the Commission is unable to make such a ruling

²² *First LNP Order* at paras. 184-85.

²³ Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3.III.H.

²⁴ *See* Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3.II. D.

²⁵ Wireline Position Paper, *First NANC Report on Wireless Wireline Integration*, Appendix D at 1.3.II.D.

sufficiently in advance of the wireless LNP mandate, the Commission should defer or extend the deadline for wireless LNP.

Respectfully submitted,

AT&T Wireless Services, Inc.

Suzanne Toller
Jane Whang
Davis Wright Tremaine LLP
One Embarcadero Center, Suite 600
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 2766599
Attorneys for AT&T Wireless Services, Inc.

/s/
Douglas I. Brandon
Vice President – Legal and External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036
Tel. (202) 223-9222

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